IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Babu Lal & Ors. Vs. The State of Raj.
(D.B.CRIMINAL APPEAL NO.427/2003)

D.B. Criminal Appeal under Section 374(2) Cr.P.C.against the judgment dt.1.4.2003 passed by the Additional Sessions Judge(Fast Track), Churu in Sessions Case No.53/2002 (32-35/2000).

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Date of Judgment: July 12, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.M.K.Garg and Mr.Niranjan Singh, for the appellants
Mr.JPS Choudhary, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The appellants herein are four brothers A-1 Babu Lal, A-2 Kanhaiya Lal, A-3 Chiranji Lal and A-4 Ved Prakash being the sons of Sita Ram. The other appellants are A-5 Smt.Kanta W/o A-3 Chiranji Lal, A-6 Smt.Leela @ Vijay Laxmi W/o A-1 Babu Lal and A-7

Smt.Indira W/o A-2 Kanhaiya Lal. They have been convicted and sentenced by the judgment of the Additional Sessions Judge (Fast Track), Churu dated 1.4.2003 as follows:-

U/Sec. 302/149 IPC	To all the accused appellants to L.I. for life and to pay a fine of Rs.1000/- by each and in default of payment of fine to further under go S.I. of six months.
U/Sec. 148 IPC	To all the accused appellants to one year R.I. and to pay a fine of Rs. 500/- and in default to further undergo 3 months S.I.
U/Sec. 447	To all the accused appellants to one month R.I. And to pay a fine of Rs.100/- and in default to further undergo 7 days S.I.

All the sentences have been ordered to run concurrently.

2. The factual scenario as emerged during the trial is that the three brothers Sohanlal (deceased), Banwarilal

(deceased) and Sita Ram (father of the appellants) had a dispute pertaining to a land known as field of Prem Chand at the outskirt of Village Ratan Nagar. It is alleged that on the date of incident i.e. 19.8.2000 at about 6 A.M. deceased Sohanlal and Banwarilal went to the field for ploughing the land. They were followed by P.W.4 Budh Mal, P.W.5 Sita Devi, P.W.11 Jayana Devi and Dharamvir. They reached at the field at about 7.30 A.M. While they were in the field, ploughing the field the appellants Babu Lal with a Jayee, Kanhaiya Lal with Gandasi, Ved Prakash with a Kasiya, Chiranji Lal and other ladies namely Munni @ Leela, Indira, Kanta and Suman with lathies arrived and mounted attack on Sohanlal and Banwarilal. P.W.4 Budh Mal, Dharamvir, P.W.5 Sita Devi and P.11Jayana raised voice to attract the villagers. All the accused persons ran away. The incident was reported by P.W.4 Budh Mal in Village Ratan Nagar. He also arranged a Jeep and took the injured Sohanlal and Banwarilal to the Hospital at Churu. Sohanlal succumbed to the injuries on the way. P.W.4 Budh Mal lodged an oral First Information Report at Police Station, Ratan Nagar at 10 A.M. On this information police registered a case and proceeded with investigation. The police inspected the site and

prepared the site plan. The police also prepared the inquest memo and sent the dead body for postmortem. A Medical Board consisting of Dr.Mahesh Joshi, Dr.M.L.Wadhwani and P.W.1 Dr.Anwar Ali conducted the postmortem on the dead bodies of Sohanlal and Banwarilal vide Ex.P1 and P2 respectively. The Medical Board noticed following injuries on the dead body of Sohanlal:

> (1) Abrasion proximal Phalanx of right index finger 1 cm x .5 cm.
>
> (2) Lacerated wound 1 cm x .7 cm x bone deep on right mastoid region.
>
> (3) Lacerated wound 5 cm x 1 cm x bone deep on right occipito parietal region; obliquely placed clotted blood present over it.
>
> (4) Multiple bruises intermingled with each other and bruised area is 16 cm x 12 cm on the pastero lateral aspect of chest on right side at the level of inferior angle of scapula.
>
> (5) Two parallel bruises – 11 cm x 2.5 cm and 9.5 cm x 2.5 cm placed 2 cm apart from each other on pastero lateral aspect of right side of chest, 5 cm below injuries No.4.
>
> (6) A bruise 8.5 cm x 4 cm on the back of chest & adjacent to right lumbar region (renal angle).

In the opinion of the medical board the cause of death of Sohanlal was shock due to internal haemorrhage from injury to right lung, liver and right kidney.

The Medical Board also noticed following injuries on the dead body of Banwarilal:-

(1) Wound stitched length 5 cm on left maxillary region.

(2) Stitched wound 4 cm length across upper portion of bridge of nose.

(3) Stitched wound 6 cm length on left side of forehead.

(4) Stitched wound 5.5 cm length on left side of forehead placed transversely.

(5) Stitched wound 6 cm long obliquely vertical on right side forehead.

(6) Stitched wound 4 cm long parallel & 1 cm lat to injury No.5.

(7) Stitched wound 6.0 cm long on left fronto parietal region placed obliquely vertical.

(8) Stitched wound 5.5 cm length on dorsum of left hand.

(9) Stitched wound 4.5 cm length on left forearm, near wrist, dorsal aspect.

(10) Linear abrasion on left thigh of lower 1/3 anterior, 5 cm length.

(11) Bruise on left thigh, left thigh anterior, middle portion 10 cm x 2 cm.

(12) Abraded bruise 6 cm x 1 cm just below right costal margin anteriorly.

(13 Abrasion 5 cm x. 1 cm. On left hypochondrium and adjacent portion of chest.

(14) Bruise 10 cm x 2 cm on left side chest just above nipple.

(15) Abrasion 1 cm x 0.5 cm. On right side of chest just below nipple.

(16) Bruise 6 cm x 4 cm antero lateral aspect of upper portion of left arm.

(17) Diffuse swelling on middle portion of left arm.

(18) Bruise 5 cm x 2 cm on upper part of left shoulder region.

In the opinion of the Medical Board the cause of death was coma due to head injury.

After usual investigation police laid charge-sheet against the appellants for the offences under sections 148,147,302 & 447 I.P.C.

3. The appellants denied the charges levelled against them and claimed trial. The prosecution in order to prove its case adduced oral and documentary evidence. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them.

The trial court having found the prosecution case proved convicted and sentenced the appellants in the manner stated above.

4. We have heard the learned counsel for the appellants and perused the impugned judgment carefully. The entire case rests on the ocular testimony of P.W.4 Budh Mal, P.W.5 Sita Devi and P.W.11Jayana Devi. P.W.4 Budh Mal deposed that they had land dispute with the sons of his elder uncle Sita Ram. Cases were also pending in that regard in courts. On the date of incident i.e. 19.8.2000 his father had gone to the field for ploughing the filed. He was accompanied by his wife P.W.5 Sita Devi and daughter P.W.11 Jayana and one Dharamvir Meena. At that time his elder uncle Sita Ram and his sons namely Babu Lal armed with Jayee, Kanhaiya Lal with Gandasi, Ved Prakash with Kassi, Chiranji Lal with a lathi and the four ladies namely Munni @ Leela, Indira, Kana and Suman arrived. The ladies were also carrying lathies in their hands. They mounted attack on his father Sohanlal and the uncle. On raising voice the accused appellant took their heels and escaped. He rushed to the village and reported the matter to other members of the family. He arranged a

Jeep and returned to the spot along with one Kailash. He took both the injured to the hospital. His father Sohanlal succumbed to the injuries on the way. His uncle Banwarilal was admitted in the hospital in unconscious condition.

5. P.W.5 Sita Devi is the wife of deceased Sohanlal. She deposed that on the date of incident her husband along with the younger brother-in-law had gone for ploughing the field. They were followed by her, her son P.W.4 Budh Mal, her husband's sister P.W.11Jayana Devi and Dharamvir. When they reached at the filed the appellants Babu Lal, Kanhaiya Lal, Ved Prakash, Chiranji Lal and their wives Leela W/o Babu Lal, Indira W/o Kanhaiya Lal, Kanta W/o Chiranji Lal and Suman W/o Ved Prakash arrived. They made an attack on her brother-in-law Banwari Lal. Babu Lal was carrying Jely, Kanhaiya Lal a Gandasi, Chiranji Lal Lathi and all ladies lathies. She further stated that her husband and brother-in-law received multiple injuries. She added that the ladies also inflicted lathi blows. The accused appellants wanted to grab their field. She along with her husband raised voice. The accused persons took to their heels. Her son P.W.4 Budha went to the village

and brought a Jeep. Her husband and the brother-in-law were taken to the hospital. It was admitted in the cross examination that prior to the incident no quarrel had taken place between the ladies of the two families. She also admitted that her statement was recorded by the police after 3 days of the incident. P.W.11 Jayana Devi is the sister of deceased Sohanlal and Banwarilal. She deposed that she visited her paternal house on the occasion of `Rakhee'. On the date of incident Banwarilal and Sohanlal had gone to the field. Thereafter she along with Sita Devi, Budh Mal, Dharamvir Meena also reached at the field at about 7 A.M. They heard the cries from the field. They immediately climbed on a sand-dune from where they could see the incident. They found that all the four nephews with their wives were assaulting her brothers. They raised the voice, which attracted some of the villagers. Babu Lal was carrying a Jayee in his hand, Kanhaiya Lal a Gandasi, Chiranji Lal a lathi, Ved Prakash a Kasiya. The other ladies namely Indira Devi, Kanta, Suman and Leela were carrying lathies in their hands. Her both the brothers received multiple injuries. They were taken to the hospital in a Jeep. In the cross examination she admitted that her statement was recorded by the police after 3 days of

the incident.

6. The another set of evidence produced by the prosecution is the recovery of weapons. Police recovered Jayee from the possession of Babu Lal vide Ex.P24 so as Gandasi from Kanhaiya Lal vide Ex.P21, Kasiya from Ved Prakash vide Ex.P25, Lathi from Chiranji Lal vide Ex.P28, Lathi from Smt.Leela vide Ex.P10, Lathi from Indira vide Ex.P22 and Lathi from Kanta vide Ex.P27. It is not necessary to deal with the evidence of recovery as except in case of Indira as per the FSL report no human blood has been found on any of the weapons. As far as the recovery of lathi from appellant Indira is concerned it has been recovered vide Ex.P22 in pursuance of the information given vide Ex.P41. As per the FSL report Ex.P43 bloodstains found on the lathi are of human origin. However, it is significant to notice that recovery memo Ex.P22 does not show that the lathi recovered was bloodstained. In view of this fact the evidence of alleged recover can not be read against appellant Smt.Indira.

7. It is contended by the learned counsel that all the three eye-witnesses are highly interested witnesses

being close relatives and as such they have not given the true version of the incident. It is further submitted that the eye-witnesses have exaggerated the case and has falsely implicated the entire family inasmuch as all the four sons of Sita Ram and their wives have been implicated. It is submitted that the statements of the witnesses cannot be accepted as gospel truth. It is pointed out that all the three witnesses has implicated Suman W/o Chiranji Lal but police did not file any charge-sheet against her. No attempt was made by the complainant to array her name as an accused. In fact during the investigation it was found that Suman was not in the village itself. She was sick and staying with her parents. This single fact indicates that the complainant party has indiscriminately implicated the entire family. It is also submitted that the only independent witness Dharamvir Meena has not been examined. On the other hand it is submitted by the learned Public Prosecutor that simply because the witnesses are the relatives of the deceased persons, their testimony cannot be discarded.

8. On careful consideration of the entire evidence, we are of the view that in the peculiar facts of the case the

evidence of each of the witnesses is required to be scrutinized with great care. All the eye-witnesses are consistent to the extent that while both the deceased were ploughing the field the accused persons arrived and took up quarrel with them. P.W.4 Budh Mal in terms has stated that the appellant Babu Lal inflicted injuries to deceased Sohanlal by a Jayee. Jayee is a pointed weapon but the postmortem report shows that there is no such injury. Similarly except P.W.5 Sita Devi, P.W.4 Budh Mal and P.W.11 Jayana no other witnesses have attributed lady accused persons inflicted injuries by lathies. On the contrary it has been admitted that all the three lady accused persons used to keep veil as per the custom in front of deceased Sohanlal and Banwarilal. Thus, it appears to be improbable that they would have participated in the incident and given lathi blows. It is evident that name of Smt.Suman has been falsely given by all the three eye-witnesses. If they could falsely implicate Suman there is no guarantee that they have falsely implicated the three other ladies. From the evidence on record we find that it is only Kanhaiya Lal , Ved Prakash and Chiranji Lal had participated. As the part assigned to Babu Lal of inflicting injury by Jayee does not find corroboration

from the medical evidence, he is entitled to be acquitted of the charges levelled against him. Similarly all the three lady accused Smt.Leela, Indira and Kanta are also entitled to benefit of doubt.

9. Consequently, the appeal is partly allowed. The conviction and sentence of appellants Babu Lal, Smt.Kanta, Smt.Leela and Smt.Indira for various offences referred to above is set aside. They are acquitted of all the charges levelled against them. Babu Lal is in Jail. He shall be released forthwith, if not required in any other case. Smt.Kanta, Smt.Leela and Smt.Indira are on bail. Their bail bonds stand discharged. The conviction and sentence of appellants Kanhaiya Lal, Chiranji Lal and Ved Prakash as awarded by the trial court and referred to above is confirmed with the modification that their conviction is altered for Section 302/149 to 302/34 I.P.C. They are acquitted of offence under Section 148 I.P.C. They are in Jail. They will serve out the remaining part of the sentence.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

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